

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on January 12, 2001 at 9:00 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Duane Grimes, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Steve Doherty (D)
Sen. Ric Holden (R)
Sen. Walter McNutt (R)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)

Members Excused: Sen. Mike Halligan (D)

Members Absent: None.

Staff Present: Valencia Lane, Legislative Branch
Cecile Tropila, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 204
Executive Action: SB 7, SB 6, SB 204, SB 1, SB 4,
SB 26

HEARING ON SB 204

Sponsor: SEN. JOHN COBB SD 25 AUGUSTA

Proponents: NONE

Opponents: NONE

Opening Statement by Sponsor:

SEN. JOHN COBB SD 25 AUGUSTA, stated that this bill deals with restitution to the victim. He said that the main part of the bill allows the victim to collect a restitution in a civil proceeding at any time after the restitution is ordered. He handed out information from the codes regarding criminal procedure **EXHIBIT(jus09a01)**. He explained the exhibit he handed out and said that the victim can go to court under a regular trial and claim for damages including restitution, but they would have to go to court and have a new hearing and new trial.

He stated that many other states allow restitution orders to be enforced the same as civil judgements. The Federal Victim Witness Protection Act of 1982 allowed a provision that stated a restitution order may be enforced as though it was civil judgement rendered by the United States District Court. He pointed out a statute from the state of Alabama, which allowed a restitution order in a criminal case as a final judgement. He said that the victim has a right to enforce this situation since the court already has the right to enforce it as a civil judgement.

Proponents Testimony: None

Opponents Testimony: None

Questions from Committee Members and Responses:

SEN. GRIMES said that **Valencia Lane, Legislative Staff**, will look over the retroactive portion of this bill.

SEN. COBB asked if what the total amount of the restitution order was? **Valencia Lane** said that on page two, line 13 it would clarify it.

Closing by Sponsor:

SEN. JOHN COBB SD 25 AUGUSTA, closed by asking the committee for support of this bill.

EXECUTIVE ACTION ON SB 7

Motion: **SEN. STEVE DOHERTY** moved that **SB 7 DO PASS**.

SEN. DOHERTY said this bill does not do anything substantive, it simply complies the myriad of references to eminent domain in the statutes and modernizes the language, bringing it up to date.

Vote: Motion carried unanimously.

Miscellaneous Discussion Regarding Proxy Voting:

CHAIRMAN LORENTS GROSFIELD handed out a paragraph dealing with proxy voting **EXHIBIT(jus09a02)**. He explained that this paragraph was drafted by **Greg Petesch, Legislative Staffer**, to review the status quo and the rules explaining absentee voting.

SEN. WALT MCNUTT asked if the committee was going leave the vote open for 24 hours. **CHAIRMAN GROSFIELD** said the committee may do that for certain situation such as a case where the vote is tied.

SEN. DUANE GRIMES said he thought that the 24 hours would be for the purpose of someone who did not get a chance to vote.

SEN. RIC HOLDEN mentioned that the proxy voting should be open a legislative day rahter than 24 hours. He thought that the chairman should have the discretion if they were to hold it open for a legislative day.

SEN. GRIMES stated that the committee should add to the proxy voting "written votes with another committee member voting left open until next scheduled meeting upon the discretion of the chairman".

Motion/Vote: **SEN. GRIMES** moved that **COMMITTEE PROXY VOTING BE AMENDED**. Motion carried unanimously.

(Tape 1; Side B)

EXECUTIVE ACTION ON SB 6

Motion: **CHAIRMAN GROSFIELD** moved that **SB 6 BE AMENDED**. Amendments were handed out **EXHIBIT(jus09a03)**.

Discussion:

Valencia Lane explained the amendments stating the sections that had been revised and made more clear.

Vote: Motion that **SB 6 BE AMENDED** carried unanimously.

Motion/Vote: **SEN. DOHERTY** moved that **SB 6 DO PASS AS AMENDED**. Motion carried unanimously.

EXECUTIVE ACTION ON SB 204

Motion: SEN. HOLDEN moved that SB 204 DO PASS.

Discussion: None

Vote: Motion carried unanimously.

EXECUTIVE ACTION ON SB 1

Motion: SEN. GRIMES moved that SB 1 DO PASS.

Discussion:

SEN. GRIMES asked for an explanation of this bill with regard to defamation law and he wondered if this bill was absolute or qualified with the changes made. **John Sullivan, Attorney, Helena,** explained that the Montana statute contains four different types of privileges and he mentioned the case of Skinner vs. Pistoria where the privileges are absolute privileges. He explained Subsection 3 defines a common interest privilege and that privilege, according to the statutory language, states that "it is privilege only if the statement is made without malice".

He handed out information from The Washington Lee Law Journal **EXHIBIT (jus09a04)**. He said that employment references are used logically to make it a part of defamation law. He went on to explain the situation of privileges for employers and that the bill was a request to have recognition that an employment reference is subject to the liable and slander laws.

SEN. GRIMES asked if this bill would increase the amount of litigation through using liable and slander approaches. **John Sullivan** answered that it shouldn't occur.

SEN. JERRY O'NEIL asked if employees were caught doing wrongful acts while on the job would they be subject to an action. **John Sullivan** said that blacklisting was not subject to this statute. He said that the blacklisting statutes were originally intended to avoid not hiring certain employees due to wrongful acts on the workforce.

SEN. HOLDEN mentioned that sections of 802 to 804 were sections that protected from untrue statements and they were being repealed and he asked what the understanding of these sections were. **John Sullivan** said that section 804 simply states

blacklisting as a crime and the amendment that is made for section 803 includes 804. Section 802 explains the consequences if an employer is actually convicted of blacklisting and he could be liable in a civil action.

SEN. GERALD PEASE asked if this bill protects the person from being liable in any type of action. **John Sullivan** remarked that if an individual employment reference was true than they cannot be sued for it. He added that if a false statement was made in an employment reference than there could be a chance of a lawsuit under a liable or slander law.

SEN. PEASE commented that he had been on lists before with labor unions and regardless of the employer, if the union job said there was a job to be done, then the employee had to go to that location. **John Sullivan** stated that this bill should not have any effect on those type of lists that labor unions hold.

{Tape 2; Side B}

Al Smith, Montana Trial Lawyers Assoc., stated that there were not many of these cases if the statement about an employee was true the employer cannot be sued for it. He also commented that within Section 802 it was talking about a former employer taking an active participation against an employee to prevent them from working again.

CHAIRMAN GROSFIELD asked if there was a problem from the employers perspective dealing with blacklisting. **Al Smith** said that there are reasons that an employer will not give a reference, it may be because the employee and employer did not get along. He said that the employer may be trying to be careful with saying true or untrue statements.

SEN. DOHERTY asked how they prove malice in these situations and also asked where in the bill does defamation law apply to employee references. **Al Smith** answered that malice is a higher standard and a harder standard to meet. He pointed out Subsection 2 that applies to proper discharge in duty of the employee.

John Sullivan said that defamation does apply to an employee reference. He explained defamation as liable either written or oral. He said that there was a defined meaning of malice and about five things a person can do to get outside of the privilege and be deemed to have acted with malice.

CHAIRMAN GROSFIELD asked **Valencia Lane** to work with the language in this bill pertaining to the definition of defamation.

Valencia Lane agreed that the definition of defamation needs to be revised. She also said this bill was a complicated bill to draft due to no definition of blacklisting existing.

Withdrawn Motion: **SEN. GRIMES** withdrew the motion **SB 1 DO PASS.**

EXECUTIVE ACTION ON SB 4

Motion: **SEN. GRIMES** moved that **SB 4 DO PASS AS AMENDED.**

Amendments were handed out **EXHIBIT(jus09a05).**

Discussion:

Valencia Lane explained the amendments and said they create a presumptive probationary period in the instances where someone is hired and if it doesn't specify a probationary period, the law would presume there is a probationary period.

Substitute Motion: **SEN. O'NEIL** made a substitute motion that **SB 4 BE AMENDED** adding "seven years probationary period" instead of 12 months.

SEN. O'NEIL stated that he understood the university system has a probationary period of 84 months rather than 12 months and he believed the public should have that same benefit.

SEN. GRIMES remarked that nothing within this current amendment restricts the employers from establishing a longer probationary period than 12 months and it could jeopardize the bill if they were to go over a one year probationary period.

Leroy Schram, Legal Counsel, MT University System, explained the university system's long probationary period and how it is standard throughout the higher education industry. He said that the 12 month period was the default period and that any employer can establish a shorter or longer probationary period.

SEN. O'NEIL asked if at-will employment would work in these cases. **Leroy Schram** explained a case, Whidden vs. Narrison, which an ambiguity was interpreted in the statute and the legislature was having to repeal the at-will statute.

SEN O'NEIL asked if the language dealing with a 12 month probationary period would this clear up the ambiguity. **Leroy Schram** answered yes, it would.

SEN. O'NEIL asked if a seven year probationary period would clear up the ambiguity. **Leroy Schram** answered yes, it would clear up the ambiguity, but other factors would be involved.

SEN O'NEIL asked if the supreme court would strike down the bill if the seven years probationary period was added. **Leroy Schram** said yes, that is a possibility.

Vote: Motion failed 8-1 with **SEN. O'NEIL** voting yes.

Discussion:

SEN. GRIMES raised the point regarding employees, who were hired on a temporary basis for a specific assignment, or for a project and they were presumed to be on a probationary period. He said that within the statute, 19-3-111, a temporary employee is defined as someone who solely works for the university system.

Jim Nyes, Society for Human Resources, commented that the types of employees who may exceed 12 months may be internships or work-study students, who are hired for a time limited purpose. He added that it was important to recognize these employees may be at-will for purposes of the probationary period, but they are still protected by the Wrongful Discharge Act.

SEN. GRIMES asked if all temporary employees would be protected by a probationary period or would this apply to employees only on specific assignments. **Jim Nyes** said that was the intent.

CHAIRMAN GROSFIELD said that language could be added in order for this be made more clear. He wanted to add to Subsection (b) **SEN. GRIMES** agreed that it needs to be reworded.

Motion/Vote: SEN. GRIMES moved **SB 4 WITH INSERTION TO SUBSECTION (b) BE AMENDED**. Motion carried unanimously.

Motion/Vote: SEN. GRIMES moved that **SB 4 AS AMENDED DO PASS**. Motion carried unanimously.

{Tape 3; Side A}

EXECUTIVE ACTION ON SB 26

Motion: SEN. HOLDEN moved **SB 26 BE AMENDED**. Amendments were handed out **EXHIBIT(jus09a06)**.

Discussion:

Valencia Lane explained the amendments and the new language added to make it simple. **SEN. HOLDEN** said the word "non-economic" was inserted in front of the word "damages" to make this bill consistent. **Al Smith, Montana Trial Lawyers Association**, commented that the new language makes the bill more understandable.

SEN. DOHERTY said that with Section 1 a person could be punitive.

SEN. O'NEIL mentioned that this bill would be good public policy.

CHAIRMAN GROSFIELD wanted to add language to this bill beginning with page 2, line 28 inserting "committed or attempted to be committed by that person". He then asked if the limits on page 10, line 2 were appropriate.

SEN. HOLDEN explained the Montana Financial Responsibility Limits and how these limits have been challenged over the last several years. He said this bill reestablishes and uses those constitutional limits that have been upheld.

Motion/Vote: **SEN. HOLDEN** changed his motion **BE AMENDED** to include the amendment suggested by **CHAIRMAN GROSFIELD** on page 2, line 28. **Motion carried unanimously.**

Motion/Vote: **SEN. GROSFIELD** moved that **SB 26 DO PASS AS AMENDED**. **Motion carried 6-2** with **SEN. DOHERTY** and **SEN. PEASE** voting no.

ADJOURNMENT

Adjournment: 11:40 A.M.

SEN. LORENTS GROSFIELD, Chairman

CECILE TROPILA, Secretary

LG/CT

EXHIBIT (jus09aad)